

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

TERRA PARTNERS; TERRA XXI, LTD.;
ROBERT WAYNE VEIGEL;
ELLA MARIE WILLIAMS VEIGEL;
VEIGEL FARMS, INC.; VEIGEL CATTLE
COMPANY; and VEIGEL FARM PARTNERS,

Plaintiffs and Counter-Defendants,

v.

No. 2:15-cv-236-J

AG ACCEPTANCE CORPORATION,

Defendant and Counter-Plaintiff.

ANSWER TO AG ACCEPTANCE CORPORATION'S ORIGINAL COUNTERCLAIM

Terra Partners, Terra XXI, Ltd., Robert Wayne Veigel, Ella Marie Williams Veigel, Veigel Farms, Inc., Veigel Cattle Company, and Veigel Farm Partners (“Plaintiffs”), by and through their attorneys Keleher & McLeod, P.A. (Jeffrey Dahl and Justin Breen), for their Answer To Ag Acceptance Corporation's Original Counterclaim ("Counterclaim"), state as follows:

RESPONSE TO FACTS

1. Plaintiffs admit paragraphs 1 through 7 of the Counterclaim, but deny that the Friemel Settlement (as defined in paragraph 3 of the Counterclaim) bars Plaintiffs from filing the Amended Petition and claims asserted therein and that Plaintiffs have breached the Friemel Settlement.

2. With respect to paragraph 8 of the Counterclaim, Plaintiffs affirmatively state that the Friemel Settlement speaks for itself and Plaintiffs deny any interpretation of said agreement contrary to its express terms. In further response, Plaintiffs affirmatively state that they are not

presently contesting any "...right of title, ownership, possession, and/or lease of the Deaf Smith County property..." In this matter, Plaintiffs are requesting an accounting of how the proceeds from the subsequent 2012 sale of the Texas property to Champion Feeders, LLC ("Champion") were applied, given the apparent superior liens on the Texas property and the releases of those liens by the lien holder, Rabo Agrifinance, Inc. ("Rabo") as part of the conveyance to Champion [See Exhibits E and F to Amended Petition, Doc. 38]. Furthermore, there is an exception to application of the Friemel Settlement written in to the agreement concerning "Litigation... in New Mexico related to the foreclosure of the New Mexico property." [Section 5(e) of Friemel Agreement.] This action was originally brought in New Mexico because it relates to foreclosure of "the New Mexico property." The claims in the Amended Petition, to the extent they concern the New Mexico property (including clearing Ag Acceptance Corporations' ("AAC") mortgages of record and any judgment liens of AAC on the New Mexico property), are expressly excluded from the Friemel Settlement.

3. With respect to Paragraph 9, Plaintiffs admit that they filed the present lawsuit against Ag Acceptance Corporation ("AAC"). Plaintiffs affirmatively state that they seek an accounting of how the proceeds from the Champion sale were applied, given the superior liens on the Texas property and the releases of those liens by the lien holder, Rabo as part of the conveyance to Champion [Exhibit E and F to Amended Petition, Doc. 38]. Plaintiffs deny any contrary allegation in paragraph 9.

4. With respect to paragraphs 10 through 13, Plaintiffs deny that they are challenging title, possession, or ownership to the property concerned. Plaintiffs have not made any challenge to title, possession, or ownership of the property referenced in Defendant's counterclaim. Accordingly, paragraphs 10 through 13 are denied.

5. Paragraphs 14 and 15 are denied.

RESPONSE TO FIRST CAUSE OF ACTION

6. Plaintiffs incorporate by reference their previous responses, in response to paragraph 1 on page 4 of the Counterclaim.

7. Plaintiffs admit paragraph 2 on page 4 of the Counterclaim.

8. Plaintiffs lack knowledge sufficient to respond to paragraph 3 on page 4 of the Counterclaim.

9. Plaintiffs deny paragraphs 4 through 8 on page 4 of the Counterclaim.

10. Plaintiffs deny all allegations in the Counterclaim not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. The Counterclaim fails to state a claim for relief against Plaintiffs. The Plaintiffs have not engaged in any conduct in violation of the Friemel Agreement. They have not challenged AAC's, or any one else's, title, ownership, or possession of, the property concerned. The Amended Petition primarily concerns the receipt and application of proceeds from the 2012 sale of that property in light of the superior liens on the property that had to be released to convey clear title to the property.

WHEREFORE, Plaintiffs respectfully request that the Counterclaim be dismissed with prejudice.

Respectfully submitted,
KELEHER & MCLEOD, P.A.

By: /s/ Justin B. Breen

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CERTIFICATE OF SERVICE

THIS HEREBY CERTIFIES that on November 5, 2015, I electronically filed the foregoing document with the Clerk of the Court for the Northern District Of Texas by using the CM/ECF system, which will send a notice of electronic filing to the following CM/ECF participants:

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